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OF COUNSEL  
WAYNE D. GREENSTONE<sup>□</sup>

\* NJ, NY & DC BARS  
\*\* NJ & PA BARS  
□ NJ & NY BARS

PARALEGAL  
DARLENE A. ABRY

September 20, 2012

**Via Hand Delivery**

Clerk of Court  
Superior Court of New Jersey  
Essex County Courthouse  
50 West Market Street, Room 113  
Newark, New Jersey 07102

**Re: New Jersey Department of Environmental Protection, et al. v.  
Occidental Chemical Corporation et al.  
ESX-L-9868-05 (PASR)**

Dear Sir or Madam:

This firm represents Plaintiffs New Jersey Department of Environmental Protection ("NJDEP"), the Commissioner of the NJDEP, and the Administrator of the New Jersey Spill Compensation Fund in the above reference matter. Enclosed for filing please find an original and one copy of the following:

1. Order to Show Cause entered by the Honorable Sebastian P. Lombardi, J.S.C. on September 20, 2012;
2. Letter dated September 19, 2012 from Plaintiffs to the Honorable Sebastian P. Lombardi, J.S.C. with exhibits; and
3. Proposed form of Order.

**Since this firm represents the State of New Jersey in this matter, no filing fee is required for the processing of this motion.**

Please return on copy of each document marked "filed" to the courier, who has been instructed to wait for same.

Thank you for your attention to this matter.

Very truly yours,

**Gordon & Gordon, P.C.**

  
Wayne D. Greenstone

cc: All counsel for Original Parties and Liaison Counsel electronically  
All counsel of record via posting on <http://cvg.ctsummation.com>

JOHN J. HOFFMAN  
 ACTING ATTORNEY GENERAL OF NEW JERSEY  
 Richard J. Hughes Justice Complex  
 25 Market Street, PO Box 093  
 Trenton, New Jersey 08625-0093  
 Attorney for Plaintiffs

By: John F. Dickinson, Jr.  
 Deputy Attorney General  
 (609) 984-4863

JACKSON GILMOUR & DOBBS, PC  
 3900 Essex Lane, Suite 700  
 Houston, Texas 77027

By: William J. Jackson, Special Counsel  
 (713) 355-5000

NEW JERSEY DEPARTMENT OF  
 ENVIRONMENTAL PROTECTION,  
 THE COMMISSIONER OF THE  
 DEPARTMENT OF ENVIRONMENTAL  
 PROTECTION and THE  
 ADMINISTRATOR OF THE NEW  
 JERSEY SPILL COMPENSATION  
 FUND,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL  
 CORPORATION, TIERRA  
 SOLUTIONS, INC., MAXUS ENERGY  
 CORPORATION, MAXUS  
 INTERNATIONAL ENERGY  
 COMPANY, REPSOL YPF, S.A.,  
 YPF, S.A., YPF HOLDINGS, INC., YPF  
 INTERNATIONAL S.A. (f/k/a YPF  
 INTERNATIONAL LTD.) and  
 CLH HOLDINGS,

Defendants.

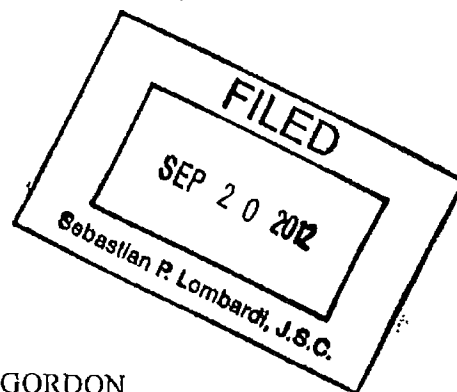
MAXUS ENERGY CORPORATION  
 AND TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

3M COMPANY, et al.,

Third-Party Defendants.



GORDON & GORDON  
 505 Morris Avenue  
 Springfield, New Jersey 07081

By: Michael Gordon, Special Counsel  
 (973) 467-2400

SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION - ESSEX COUNTY  
 DOCKET NO. ESX-L9868-05 (PASR)

Civil Action

**ORDER TO SHOW CAUSE**

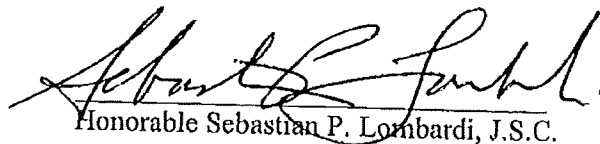
**THIS MATTER**, having come before the Court on the application of Plaintiffs and some 200 Third-Party Defendants for an Order to Show Cause asking the Court, in the interests of justice, expedience and judicial economy, to stay all third party practice involving the applicant Third Parties for ninety (90) days while the applicants reach a final Settlement Agreement with respect to the third party claims, and the Court having read the papers submitted herewith,

**IT IS** on this 20<sup>th</sup> day of September, 2012,

**ORDERED** that the Plaintiffs' and Third Parties' application for a stay of third-party practice, including the requirement to name additional third- and fourth-party defendants by September 22, 2012, be the subject of a show cause hearing on Friday, September 21, 2012 at 1:30 p.m. ~~9:30 a.m.~~, wherein all interested parties may be heard; and,

**IT IS FURTHER ORDERED** that the papers of Plaintiffs and Third-Party Defendants along with the signed Show Cause Order shall be posted forthwith on CT Summation and served electronically on all of the Original Parties and Liaison Counsel, and,

**IT IS FURTHER ORDERED** that any party may file papers in support of or in opposition to this Order to Show Cause no later than 4:30 p.m. on Thursday, September 20, 2012, by hand delivery to the Court, posting on CT Summation and serving all of the Original Parties and Liaison Counsel electronically.



Honorable Sebastian P. Lombardi, J.S.C.



*State of New Jersey*  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
25 MARKET STREET  
PO Box 093  
TRENTON, NJ 08625-0093

CHRIS CHRISTIE  
*Governor*

JOHN J. HOFFMAN  
*Acting Attorney General*

KIM GUADAGNO  
*Lt. Governor*

ROBERT LOUGY  
*Acting Director*

September 19, 2012

Honorable Sebastian P. Lombardi  
Essex County Historic Courthouse  
470 Dr. Martin Luther King, Jr. Blvd  
Chambers 203  
Newark, New Jersey 07102

Re: NJDEP, et al. v. Occidental, et al.  
Docket No. ESX-L-9868-05

Dear Judge Lombardi:

Plaintiffs and approximately 200 of the third-party defendants, including most public entities and private parties in the litigation, are pleased to advise the Court that they have executed a Memorandum of Understanding (MOU) concerning terms of a full and final settlement of the litigation as it relates to these third-party defendants. Additionally, a framework has been developed to include potential additional third- and fourth-party defendants that are inclined to participate in such a settlement.

The signed MOUs attached to this letter, and submitted in support of the application accompanying this letter, represent counsel's commitment to recommend a settlement agreement based upon Confidential Term Sheets developed by the counsel for the participating parties.

Based upon the framework for settlement outlined in the Confidential Term Sheets that counsel are recommending to their clients, the movants are requesting that all participating parties be granted a time period of 90 days to complete negotiations and finalize a formal settlement agreement document. A final settlement agreement will require formal



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approval by all public entities pursuant to their applicable legal requirements and by the private third parties, as well as the State. Following complete drafting and approval, anticipated to be completed within 90 days, the Plaintiffs will have to publish the complete settlement agreement for notice and comment for an additional 30 days.

Following this period, it is contemplated that this Court will review at a formal hearing the final, approved settlement agreement, and that such agreement will likely be challenged at that time by certain original defendants who are not participating in this settlement. It is anticipated that the Court will be asked at that hearing to determine whether the specifics of the settlement are reasonable based upon the facts of this case and operative legal and equitable principles.

The parties recognize and have incorporated this Court's express ruling that there shall be no double recovery of Plaintiffs' damages, and thus it is contemplated that the original defendants may be entitled to some form of credit. Plaintiffs anticipate that any questions related to the specific mechanism of contribution protection, any consideration of credits, and the original defendants' direct claims, will be addressed by the Court at the hearing following the publication of the actual formal settlement agreement.

The Plaintiffs and participating third-party defendants request that the Court stay this litigation as to all third-party defendants who have authorized the signing of the MOU. This stay is requested for a 90 day period only. The parties also request that the Court allow the participating parties to update the Court of the status of the settlement process on the 60<sup>th</sup> day from today. The requested stay of the litigation as to the third parties would encompass a hold on their deadline to add third- and fourth-parties, currently set for Monday, September 24<sup>th</sup>, as well as all other case management obligations applicable to the third-parties, but only for those third-party defendants who have executed the attached MOU and are participating in the settlement process.

Since some counsel were unable to fully review the matter prior to today's hearing and thus felt unable to recommend settlement to their clients without additional time, the parties

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also request that additional third-party defendants' counsel be permitted to sign the MOU by 5:00 p.m. Monday in order to be covered by the Court's Order.

The Plaintiffs recognize the significance of the requested relief but believe that this request is consistent with the active case management and direction of this Court and the Special Master that the parties explore any and all means for moving towards a resolution of this complex, costly and significant litigation. Thus, the Plaintiffs believe that the goal of the Court and Special Master to promote a just and efficient resolution of this matter is being realized through the instant application before Your Honor.

Respectfully submitted,  
JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: Gregory F. Dickinson / for  
John F. Dickinson, Jr.  
Deputy Attorney General

## MEMORANDUM OF UNDERSTANDING

New Jersey Department of Environmental Protection et al, v. Occidental Chemical Corporation,  
et al., Essex County Law Division, Docket No. ESX-L-009868-05

This Memorandum of Understanding (the "MOU") has been entered into between the attorneys for Plaintiffs, the New Jersey Department of Environmental Protection ("NJDEP"), the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund (collectively, "Plaintiffs") and the attorneys for the Third-Party Defendant(s) identified below ("TPD"), concerning the settlement and resolution of the claims and liabilities of third-party defendants named in *New Jersey Department of Environmental Protection v. Occidental Chemical Corporation, et al.*; Docket No. ESX-L-986-05, in the Superior Court of New Jersey, Law Division, Essex County (the "Passaic River Litigation").

1. It is the intent of the undersigned attorneys to settle all claims asserted against the TPD(s) in the Passaic River Litigation to the maximum extent possible.
2. Counsel for Plaintiffs and TPD(s) have agreed upon a Confidential Term Sheet containing the terms essential to a proposed settlement, though not necessarily exclusive.
3. The undersigned attorney has agreed to recommend to his client TPD(s) that the essential terms be accepted and that he or she be authorized to enter into negotiations to draft and finalize a Settlement Agreement based upon the framework outlined in the Confidential Term Sheet.
4. Attorneys for the Plaintiffs and TPD(s) have agreed to recommend that a Settlement Agreement be drafted and formally approved by their clients within ninety (90) days, pursuant to the New Jersey regulations and statutes applicable to public entities, including the State, and the notice, comment and deliberative processes required thereby, if any.
5. Attorneys for the Plaintiffs and the TPD(s) agree that they will jointly move on Friday, September 21, 2012 before the Trial Court for an order staying all third- and fourth-party practice for the earlier of 90 days or such time as the Settlement Agreement is finalized, which Settlement Agreement can then be reviewed and approved by the Court.
6. Plaintiffs and the TPDs have agreed that the substance of these negotiations and the documentation generated during the course of these negotiations that are shared among them are strictly confidential and are protected under New Jersey Rule of Evidence 408.
7. The terms of the Confidential Term Sheet will not become binding and effective until the Settlement Agreement is fully executed by Plaintiffs and settling TPDs, published, and approved by the Court.

By: 

Attorney for Third-Party Defendant(s): Common Counsel for Joint Defense Group  
(see attached list)

By: 

Attorney for Plaintiffs



**Members of the Joint Defense Group ("JDG") in  
*NJDEP, et al. v. Occidental Chemical Corporation, et al.*  
(Superior Court of New Jersey, Essex County Docket ESX-L-9868-05)**

COMPANY
3M Company
ACH Food Companies, Inc.
Akzo Nobel Coatings Inc.
Alliance Chemical, Inc.
Alumax Mill Products, Inc.
American Cyanamid Company (now known as Wyeth Holdings Corporation), Wyeth (now known as Wyeth LLC), and Shulton, Inc., solely as to allegations in Third Party Complaint D related to the Clifton, NJ facility
Apexical, Inc.
Arkema, Inc.
Ashland Inc. on behalf of itself and on behalf of its wholly-owned holding and investment company, Ashland International Holdings, Inc.
BASF Corporation, on its own behalf and on behalf of BASF Catalysts, BASF Construction Chemicals and CIBA Corporation
Bayer Corporation
Beazer East, Inc.
Benjamin Moore & Co.
Berol Corporation
BP Products North America Inc.
Celanese Ltd.
Conagra Panama Inc.
Conopco, Inc.
Consolidated Rail Corporation
Covanta Essex Company
Croda Inc.
Darling International, Inc.
Davanne Realty Co.
DiLorenzo Properties Company
Dow Chemical Company
E.I. du Pont de Nemours and Company and Pitt-Consol Chemical Company
EPEC Polymers, Inc.
Essex Chemical Corporation
Exxon Mobil Corporation
Fiske Brothers Refining Company
Flexon Industries Corp.
Flint Group Incorporated
Franklin-Burlington Plastics, Inc.
Garfield Molding Co., Inc.
General Cable Industries, Inc.
General Dynamic Corporation
General Electric Company
Givaudan Fragrances Corporation
Goody Products, Inc.
Gordon Terminal Service Co. of N.J., Inc.
Hartz Mountain Corporation
Hess Corporation
Hexcel Corporation on behalf of itself and on behalf of Fine Organics Corporation
Hoffmann-La Roche Inc.
Honeywell International Inc.
ICI Americas Inc.

**Members of the Joint Defense Group ("JDG") in  
*NJDEP, et al. v. Occidental Chemical Corporation, et al.*  
(Superior Court of New Jersey, Essex County Docket ESX-L-9868-05)**

COMPANY
ISP Chemicals LLC
ITT Corporation
Kao Brands Company
Kinder Morgan Liquid Terminals
Kohler Bright Star
Legacy Vulcan Corp.
Linde, Inc.
Lucent Technologies, Inc. (Alcatel-Lucent USA Inc.)
Mallinckrodt Inc.
Merck Sharp & Dohme Corporation (formerly known as Merck & Co., Inc.) and Schering Corporation
Metal Management Northeast, Inc.
Morton International, Inc.
NL Industries, Inc.
National Fuel Oil, Inc.
National-Standard LLC
Nestle U.S.A., Inc.
News Publishing Australia Ltd. (successor to Chris-Craft Industries)
Novelis Corporation (f/k/a Alcan Aluminum Corporation)
Otis Elevator Company
Pfizer, Inc.
Pharmacia Corporation
Phelps Dodge Industries, Inc.
Power Test Realty Company Limited Partnership and Getty Properties Corp., the General Partner of Power Test Realty Company Limited Partnership
PPG Industries, Inc.
Praxair, Inc.
PRC-Desoto International, Inc.
Public Service Electric and Gas Company
Purdue Pharma Technologies, Inc. and Nappwood Land Corporation
Quality Carriers, Inc., and Quala Sytems, Inc.
Reichhold, Inc.
Revere Smelting & Refining Corporation
Roman Asphalt Corporation
Safety-Kleen EnviroSystems Company by McKesson and McKesson Corporation for itself
Sequa Corporation
Stanley Black & Decker, Inc. (formerly known as The Stanley Works)
STWB Inc.
Sun Chemical Corporation
Sunoco, Inc. (R&M) f/k/a Sun Refining & Marketing Co., Sunoco, Inc. f/k/a Sun Oil Co., and Sun Pipe Line Company
Tate & Lyle Ingredients Americas, Inc. formerly known as A.E. Staley Manufacturing Company including its former division Staley Chemical Company
Teva Pharmaceuticals USA, Inc. (f/k/a Biocraft Laboratories, Inc.)
Textron Inc.
The Newark Group
The Procter & Gamble Manufacturing Company
The Sherwin-Williams Company
The Valspar Corporation
Thirty-Three Queen Realty, Inc.

**Members of the Joint Defense Group ("JDG") in  
*NJDEP, et al. v. Occidental Chemical Corporation, et al.*  
(Superior Court of New Jersey, Essex County Docket ESX-L-9868-05)**

COMPANY
Three County Volkswagen
Tiffany & Co.
TRMI-H LLC
Troy Chemical Corporation, Inc.
Universal Oil Products Company
Velsicol Chemical Corporation
Vertellus Specialities Inc. f/k/a Reilly Industries, Inc.; Rutherford Chemicals LLC
Whittaker Corporation
Zeneca, Inc.

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By: [Signature]

Liason Counsel

Attorney for Third-Party Defendant(s): Eric Rothberg

(attached list)

Dated as of 9/19/12

By: [Signature]

Attorney for Plaintiffs

Eric B. Rothenberg Non-JDG Liaison Counsel Third-Party Defendants

<b>AGC Chemicals Americas, Inc.</b>
<b>Alden-Leeds, Inc.</b>
<b>Apolan International, Inc.</b>
<b>Associated Auto Body</b>
<b>Atlas Refinery, Inc.</b>
<b>Automatic Electro-Plating Corp.</b>
<b>Belleville Industrial Center</b>
<b>B-Line Trucking</b>
<b>Borden &amp; Remington Corp.</b>
<b>CWC Industries, Inc.</b>
<b>Cytec Industries Inc.</b>
<b>Dundee Water Power and Land Company</b>
<b>Duraport Realty One LLC</b>
<b>Duraport Realty Two LLC</b>
<b>Fort James Corporation</b>
<b>Foundry Street Corp.</b>
<b>Houghton International, Inc.</b>
<b>Hudson Tool &amp; Die Company, Inc.</b>
<b>Innospec Active Chemicals LLC</b>
<b>INX International Ink Co.</b>
<b>MI Holdings, Inc.</b>
<b>Prysmian Communications Cables and Systems USA LLC</b>
<b>Reckitt Benckiser, INC.</b>
<b>Rexam Beverage Can Company</b>
<b>Royce Associates, A Limited Partnership</b>
<b>S&amp;A Realty Associates, Inc.</b>
<b>The Dial Corporation</b>

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By: 

JOSEPH J. TRIARISI, ESQ.

Attorney for Third-Party Defendant(s): TOWNSHIP OF CLARK

By: 

Attorney for Plaintiffs

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By: \_\_\_\_\_

Attorney for Third-Party Defendant(s): \_\_\_\_\_

By: \_\_\_\_\_

Attorney for Plaintiffs

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By: Michael D. Wirt

Attorney for Third-Party Defendant(s): MECHAM D. WIRT, GSA. PASSAIC VALLEY SPILL COMPENSATION COMMISSIONERS

By: [Signature]

Attorney for Plaintiffs



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By: Kenneth W. Kayser  
Kenneth W. Kayser  
Attorney for Third-Party Defendant(s): Township of West Orange

By: [Signature]  
Attorney for Plaintiffs

## MEMORANDUM OF UNDERSTANDING

New Jersey Department of Environmental Protection et al, v. Occidental Chemical Corporation,  
et al., Essex County Law Division, Docket No. ESX-L-009868-05

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By: [Signature] AAG

Attorney for Third-Party Defendant(s): [Signature]

By: [Signature]

Attorney for Plaintiffs

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By: APG

Attorney for Third-Party Defendant(s): Rept 7 Ag 11

By: [Signature]

Attorney for Plaintiffs

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By: Richard D. Hyland

Attorney for Third-Party Defendant(s): Borough of Roselle Park

By: [Signature]

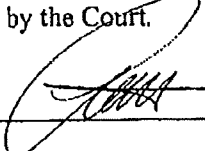
Attorney for Plaintiffs

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By:  Steven A. Kuzman

Attorney for Third-Party Defendant(s): Borough of Garwood, Borough of New Providence,  
Township of Berkeley Heights, Township of  
Springfield

By: 

Attorney for Plaintiffs

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By: \_\_\_\_\_

Attorney for Third-Party Defendant(s): Borough of Hasbrouck Heights

By: \_\_\_\_\_

Attorney for Plaintiffs

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By: Robert P. Corrao

Attorney for Third-Party Defendant(s): Berenech of Perera

By: [Signature]


Attorney for Plaintiffs

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By: 

Attorney for Third-Party Defendant(s): ATTY J PATTERSON

By: 

Attorney for Plaintiffs



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By: William R. Holzappel  
William R. Holzappel, City Attorney  
Attorney for Third-Party Defendant(s): City of Elizabeth 9/19/12

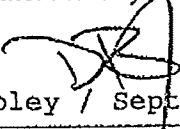
By: [Signature]  
Attorney for Plaintiffs

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By:  Daren R. Eppley / September 19, 2012

Attorney for Third-Party Defendant(s): Township of Millburn

By: 


Attorney for Plaintiffs

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By:  Daren R. Eppley / September 19, 2012

Attorney for Third-Party Defendant(s): Borough of Mountainside

By: 

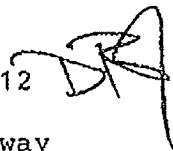
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By: Daren R. Eppley / September 19, 2012 

Attorney for Third-Party Defendant(s): City of Rahway

By: 

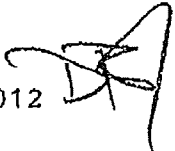
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By: Daren R. Eppley / September 19, 2012 

Attorney for Third-Party Defendant(s): Township of Scotch Plains

By: 

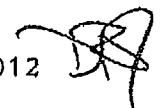
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7. The terms of the Confidential Term Sheet will not become binding and effective until the Settlement Agreement is fully executed by Plaintiffs and settling TPDs, published, and approved by the Court.

By: Daren R. Eppley / September 19, 2012 

Attorney for Third-Party Defendant(s): Township of South Orange Village

By: 

Attorney for Plaintiffs

MEMORANDUM OF UNDERSTANDING

New Jersey Department of Environmental Protection et al, v. Occidental Chemical Corporation,  
et al., Essex County Law Division, Docket No. ESX-L-009868-05

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By: Daren R. Eppley / September 19, 2012 

Attorney for Third-Party Defendant(s): City of Summit

By: 

Attorney for Plaintiffs

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By: Daren R. Eppley / September 19, 2012 

Attorney for Third-Party Defendant(s): Town of Westfield

By: 

Attorney for Plaintiffs

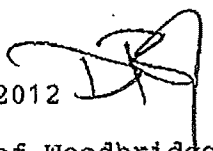


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By: Daren R. Eppley / September 19, 2012 

Attorney for Third-Party Defendant(s): Township of Woodbridge

By: 

Attorney for Plaintiffs

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By: 

DAVID J. MAIRO

Attorney for Third-Party Defendant(s):

*Borough of Carteret & Township of Little Falls*

By: 

Attorney for Plaintiffs

MEMORANDUM OF UNDERSTANDING

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By: Ryan [Signature]

Attorney for Third-Party Defendant(s): City of East Orange

By: Walter D. Krombach [Signature]

Attorney for Plaintiffs

MEMORANDUM OF UNDERSTANDING

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By: \_\_\_\_\_

Attorney for Third-Party Defendant(s): \_\_\_\_\_

By: \_\_\_\_\_

Attorney for Plaintiffs

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By: B. Roccamo

Attorney for Third-Party Defendant(s): Town of Harrison

By: Walter D. Greenstein

Attorney for Plaintiffs

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By: Neil Ranotta  
Neil Ranotta

Attorney for Third-Party Defendant(s): Borough of East Newark

By: Wayne D. Hronsteyn

Attorney for Plaintiffs

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By: \_\_\_\_\_

Attorney for Third-Party Defendant(s): \_\_\_\_\_

By: \_\_\_\_\_

Attorney for Plaintiffs

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By: \_\_\_\_\_

*Brian M. Hak, Esq.*

Attorney for Third-Party Defendant(s): *Rahway Valley Sewerage Authority*

By: \_\_\_\_\_

*Walter D. Kramer*  
Attorney for Plaintiffs



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By: \_\_\_\_\_

Attorney for Third-Party Defendant(s): \_\_\_\_\_

*Telen O'HEARNY*

By: \_\_\_\_\_

Attorney for Plaintiffs

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By: Kathleen Hill Miller

Attorney for Third-Party Defendant(s): The Port Authority of New York & New Jersey

By: Walter R. Kramer

Attorney for Plaintiffs

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6. Plaintiffs and the TPDs have agreed that the substance of these negotiations and the documentation generated during the course of these negotiations that are shared among them are strictly confidential and are protected under New Jersey Rule of Evidence 408.
7. The terms of the Confidential Term Sheet will not become binding and effective until the Settlement Agreement is fully executed by Plaintiffs and settling TPDs, published, and approved by the Court.

By: Elia R. Mena 9/19/12  
Elia R. Mena, Esq.  
Attorney for Third-Party Defendant(s): Newark Housing Authority


By: Wm D. Brennan  
Attorney for Plaintiffs

## MEMORANDUM OF UNDERSTANDING


New Jersey Department of Environmental Protection et al, v. Occidental Chemical Corporation,  
et al., Essex County Law Division, Docket No. ESX-L-009868-05

This Memorandum of Understanding (the "MOU") has been entered into between the attorneys for Plaintiffs, the New Jersey Department of Environmental Protection ("NJDEP"), the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund (collectively, "Plaintiffs") and the attorneys for the Third-Party Defendant(s) identified below ("TPD"), concerning the settlement and resolution of the claims and liabilities of third-party defendants named in *New Jersey Department of Environmental Protection v. Occidental Chemical Corporation, et al.*; Docket No. ESX-L-986-05, in the Superior Court of New Jersey, Law Division, Essex County (the "Passaic River Litigation").

1. It is the intent of the undersigned attorneys to settle all claims asserted against the TPD(s) in the Passaic River Litigation to the maximum extent possible.
2. Counsel for Plaintiffs and TPD(s) have agreed upon a Confidential Term Sheet containing the terms essential to a proposed settlement, though not necessarily exclusive.
3. The undersigned attorney has agreed to recommend to his client TPD(s) that the essential terms be accepted and that he or she be authorized to enter into negotiations to draft and finalize a Settlement Agreement based upon the framework outlined in the Confidential Term Sheet.
4. Attorneys for the Plaintiffs and TPD(s) have agreed to recommend that a Settlement Agreement be drafted and formally approved by their clients within ninety (90) days, pursuant to the New Jersey regulations and statutes applicable to public entities, including the State, and the notice, comment and deliberative processes required thereby, if any.
5. Attorneys for the Plaintiffs and the TPD(s) agree that they will jointly move on Friday, September 21, 2012 before the Trial Court for an order staying all third- and fourth-party practice for the earlier of 90 days or such time as the Settlement Agreement is finalized, which Settlement Agreement can then be reviewed and approved by the Court.
6. Plaintiffs and the TPDs have agreed that the substance of these negotiations and the documentation generated during the course of these negotiations that are shared among them are strictly confidential and are protected under New Jersey Rule of Evidence 408.
7. The terms of the Confidential Term Sheet will not become binding and effective until the Settlement Agreement is fully executed by Plaintiffs and settling TPDs, published, and approved by the Court.

By: 

PETER J. KING, ESQ., Attorney for THIRD PARTY DEFENDANTS: 1) Bayonne Municipal Utilities Authority; 2) East Rutherford Borough; 3) Elmwood Park Borough; 4) Lodi Borough; 5) Lyndhurst Township; 6) North Arlington Borough; 7) Rutherford Borough; 8) Saddle Brook Township; 9) South Hackensack Township; 10) Wallington Borough; 11) Wood-Ridge Borough; and 12) Wyckoff Township

By: 

Attorney for Plaintiffs

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Richard J. Hughes Justice Complex  
25 Market Street, PO Box 093  
Trenton, New Jersey 08625-0093  
Attorney for Plaintiffs

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(713) 355-5000

GORDON & GORDON  
505 Morris Avenue  
Springfield, New Jersey 07081

By: Michael Gordon, Special Counsel  
(973) 467-2400

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,  
THE COMMISSIONER OF THE  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION and THE  
ADMINISTRATOR OF THE NEW  
JERSEY SPILL COMPENSATION  
FUND,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL  
CORPORATION, TIERRA  
SOLUTIONS, INC., MAXUS ENERGY  
CORPORATION, MAXUS  
INTERNATIONAL ENERGY  
COMPANY, REPSOL YPF, S.A.,  
YPF, S.A., YPF HOLDINGS, INC., YPF  
INTERNATIONAL S.A. (f/k/a YPF  
INTERNATIONAL LTD.) and  
CLH HOLDINGS,

Defendants.

MAXUS ENERGY CORPORATION  
AND TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

3M COMPANY, et al.,

Third-Party Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - ESSEX COUNTY  
DOCKET NO. ESX-L9868-05 (PASR)

Civil Action

**ORDER STAYING**

**THIRD PARTY PROCEEDINGS**

**THIS MATTER**, having come before the Court on an application by Plaintiffs and some 200 Third Party Defendants (the "Participating Third-Parties") for a stay of all third party proceedings in the above referenced matter for ninety (90) days while the Plaintiffs and Participating Third-Parties negotiate a final settlement mechanism for all third- and fourth-parties for the Court's review and approval;

**WHEREAS** the Plaintiffs and the Participating Third Parties have entered into a Memorandum of Understanding ("MOU") to engage in confidential settlement negotiations to resolve certain third-party claims, and the Court having considered the matter, reviewed the submissions of the parties, having heard argument, and for good cause shown,

**IT IS** on this \_\_\_\_ day of \_\_\_\_\_, 2012

**ORDERED** that the September 24, 2012 deadline for Third Party Defendants to file Fourth-Party Complaints, pursuant to the Order of this Court dated September 10, 2012, is hereby extended for 90 days as to the Participating Third Parties to allow Plaintiffs and the Participating Third-Parties to reach final terms of a Settlement Agreement; and it is further

**ORDERED** that the September 24, 2012 deadline for all non-Participating Third-Parties and all other parties to file Third- and Fourth-Party Complaints, pursuant to the Order of this Court dated September 10, 2012, remains in effect and is not modified in any way by this Order; and, it is further

**ORDERED** that all proceedings and requirements in this action, including all discovery, involving the Participating Third-Parties who have executed with Plaintiffs the MOU referred to hereinabove, including any and all proceedings and requirements under all Case Management

Orders and supplemental orders, setting forth and modifying said proceedings and requirements, are hereby stayed for a period of ninety (90) days; and it is further

**ORDERED** that any non-participating Third-Party whose attorney executes an MOU with Plaintiffs before 4 p.m. on Monday, September 24, 2012, shall be entitled to the relief provided pursuant to this stay Order, and it is further

**ORDERED** that the parties engaged in the settlement process shall report back to the Court as to status sixty (60) days from the date of entry of this Order; and it is further

**ORDERED** that this Order shall be posted forthwith on CT Summation and served electronically on all of the Original Parties and Liaison Counsel.

---

Honorable Sebastian P. Lombardi, J.S.C.

     Opposed

     Unopposed

September 21, 2012

**VIA HAND DELIVERY**

The Honorable Sebastian P. Lombardi, J.S.C.  
Superior Court of New Jersey – Law Division  
Historic Courthouse  
470 Dr. Martin Luther King Blvd.  
Newark, New Jersey 07102

2555 Grand Blvd.  
Kansas City  
Missouri 64108-2613  
816.474.6550  
816.559.2487 DD  
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derickson@shb.com

**Re: NJDEP v. Occidental Chem. Corp. et al., Docket No. ESX-L-9868-05 –  
State's Order to Show Cause**

Your Honor:

This firm represents the Joint Defense Group of Third-Party Defendants ("JDG") comprised of certain third party defendants, more specifically set forth in Exhibit A to this letter. Please accept this letter brief on behalf of the JDG in support of Plaintiff NJDEP's Order to Show Cause seeking a 90-day stay of all third party practice pending negotiation and approval of settlement terms between NJDEP and the third party defendants, including members of the JDG. For the reasons set forth in NJDEP's application, the Court should grant a 90-day stay of third party practice in this case to allow the NJDEP and the third party defendants to resolve claims against the third party defendants in an efficient, economical, and focused manner.

This is a highly complex case, involving unique questions of law, significant technical and scientific issues, and discovery involving hundreds of third party defendant companies and municipalities with limited resources. The NJDEP and over 200 third party defendants have entered into Memoranda of Understanding that establish a framework for the third party defendants to resolve any liability to the NJDEP. Given the large number of third party defendants involved, NJDEP has requested that all third party proceedings be stayed to allow the parties to negotiate settlement terms and present them to the Court for approval. The JDG believes that, in these circumstances, the requested stay is appropriate and will facilitate and encourage the ultimate resolution of claims against third party defendants, ultimately narrowing and focusing this litigation.

Allowing the settlement process to proceed in an orderly manner, without the parties needlessly engaging in further discovery, expert witness development, and additional third and fourth party practice, will conserve the limited resources of both the Court and the parties. Further, permitting this short stay will not prejudice any party. Maxus and Tierra will maintain any rights to express their position of the ultimate settlements between NJDEP and the third party defendants.

Geneva  
Houston  
Kansas City  
London  
Miami  
Orange County  
San Francisco  
Tampa  
Washington, D.C.

5286031




In short, given that settlement between the NJDEP and hundreds of third party defendants appears to be in sight, there is no justification for the parties and the Court to continue expending massive resources pending negotiation of the settlements, particularly when no undue prejudice will be caused by granting the requested stay.

The Honorable  
Judge Lombardi  
Sept. 21, 2012  
Page 2

Thank you for your consideration.

Respectfully Submitted,

  
David R. Erickson

Eric Rothenberg, O'Melveny & Myers LLP

cc: All Counsel of Record (via electronic posting)

Geneva  
Houston  
Kansas City  
London  
Miami  
Orange County  
Philadelphia  
San Francisco  
Tampa  
Washington, D.C.

5286031

Exhibit A

**Third-Party Defendants Comprising the Joint Defense Group (“JDG”) in  
*NJDEP, et al. v. Occidental Chemical Corporation, et al.*  
(Superior Court of New Jersey, Essex County Docket ESX-L-9868-05)**

COMPANY
3M Company
ACH Food Companies, Inc.
Akzo Nobel Coatings Inc.
Alliance Chemical, Inc.
Alumax Mill Products, Inc.
American Cyanamid Company (now known as Wyeth Holdings Corporation), Wyeth (now known as Wyeth LLC), and Shulton, Inc., solely as to allegations in Third Party Complaint D related to the Clifton, NJ facility
Apexical, Inc.
Arkema, Inc.
Ashland Inc. on behalf of itself and on behalf of its wholly-owned holding and investment company, Ashland International Holdings, Inc.
BASF Corporation, on its own behalf and on behalf of BASF Catalysts, BASF Construction Chemicals and CIBA Corporation
Bayer Corporation
Beazer East, Inc.
Benjamin Moore & Co.
Berol Corporation
BP Products North America Inc.
Celanese Ltd.
Conagra Panama Inc.
Conopco, Inc.
Consolidated Rail Corporation
Covanta Essex Company
Croda Inc.
Darling International, Inc.
Davanne Realty Co.
DiLorenzo Properties Company
Dow Chemical Company
E.I. du Pont de Nemours and Company and Pitt-Consol Chemical Company
EPEC Polymers, Inc.
Essex Chemical Corporation
Exxon Mobil Corporation
Fiske Brothers Refining Company
Flexon Industries Corp.
Flint Group Incorporated
Franklin-Burlington Plastics, Inc.
Garfield Molding Co., Inc.
General Cable Industries, Inc.
General Dynamic Corporation
General Electric Company
Givaudan Fragrances Corporation
Goody Products, Inc.
Gordon Terminal Service Co. of N.J., Inc.
Hartz Mountain Corporation
Hess Corporation
Hexcel Corporation on behalf of itself and on behalf of Fine Organics Corporation
Hoffmann-La Roche Inc.
Honeywell International Inc.
ICI Americas Inc.

Exhibit A

**Third-Party Defendants Comprising the Joint Defense Group (“JDG”) in  
*NJDEP, et al. v. Occidental Chemical Corporation, et al.*  
(Superior Court of New Jersey, Essex County Docket ESX-L-9868-05)**

COMPANY
ISP Chemicals LLC
ITT Corporation
Kao Brands Company
Kinder Morgan Liquid Terminals
Kohler Bright Star
Legacy Vulcan Corp.
Linde, Inc.
Lucent Technologies, Inc. (Alcatel-Lucent USA Inc.)
Mallinckrodt Inc.
Merck Sharp & Dohme Corporation (formerly known as Merck & Co., Inc.) and Schering Corporation
Metal Management Northeast, Inc.
Morton International, Inc.
NL Industries, Inc.
National Fuel Oil, Inc.
National-Standard LLC
Nestle U.S.A., Inc.
News Publishing Australia Ltd. (successor to Chris-Craft Industries)
Novelis Corporation (f/k/a Alcan Aluminum Corporation)
Otis Elevator Company
Pfizer, Inc.
Pharmacia Corporation
Phelps Dodge Industries, Inc.
Power Test Realty Company Limited Partnership and Getty Properties Corp., the General Partner of Power Test Realty Company Limited Partnership
PPG Industries, Inc.
Praxair, Inc.
PRC-Desoto International, Inc.
Public Service Electric and Gas Company
Purdue Pharma Technologies, Inc. and Nappwood Land Corporation
Quality Carriers, Inc., and Quala Sytems, Inc.
Reichhold, Inc.
Revere Smelting & Refining Corporation
Roman Asphalt Corporation
Safety-Kleen Envirosystems Company by McKesson and McKesson Corporation for itself
Sequa Corporation
Stanley Black & Decker, Inc. (formerly known as The Stanley Works)
STWB Inc.
Sun Chemical Corporation
Sunoco, Inc. (R&M) f/k/a Sun Refining & Marketing Co., Sunoco, Inc. f/k/a Sun Oil Co., and Sun Pipe Line Company
Tate & Lyle Ingredients Americas, Inc. formerly known as A.E. Staley Manufacturing Company including its former division Staley Chemical Company
Teva Pharmaceuticals USA, Inc. (f/k/a Biocraft Laboratories, Inc.)
Textron Inc.
The Newark Group
The Procter & Gamble Manufacturing Company
The Sherwin-Williams Company
The Valspar Corporation
Thirty-Three Queen Realty, Inc.

Exhibit A

**Third-Party Defendants Comprising the Joint Defense Group (“JDG”) in  
*NJDEP, et al. v. Occidental Chemical Corporation, et al.*  
(Superior Court of New Jersey, Essex County Docket ESX-L-9868-05)**

COMPANY
Three County Volkswagen
Tiffany & Co.
TRMI-H LLC
Troy Chemical Corporation, Inc.
Universal Oil Products Company
Velsicol Chemical Corporation
Vertellus Specialities Inc. f/k/a Reilly Industries, Inc.; Rutherford Chemicals LLC
Whittaker Corporation
Zeneca, Inc.

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WISCONSIN

Jonathan I. Epstein,  
Partner responsible for  
Princeton Office

Established 1849

September 20, 2012

VIA FACSIMILE AND ELECTRONIC POSTING

Honorable Sebastian P. Lombardi, J.S.C.  
Superior Court of NJ – Law Division  
Historic Courthouse  
470 Dr. Martin Luther King, Jr. Blvd.  
Newark, New Jersey 07102

Re: NJDEP v. Occidental Chemical Corp.; Docket No. ESX-L-9868-05

Dear Judge Lombardi:

On behalf of Defendants and Third Party Plaintiffs Maxus Energy Corporation (“Maxus”) and Tierra Solutions, Inc. (“Tierra”), I write in response to the Order to Show Cause entered by Your Honor this morning and in opposition to Plaintiffs’ and the Third Party Defendants’ request for a stay. The Order to Show Cause seeks an emergent stay of the September 24th deadline for the filing of fourth party complaints, and all other deadlines applicable to certain of the third party defendants, based on Plaintiffs’ representation that they are engaged in settlement discussions with those parties. There is no basis for the State to demand this kind of relief in such a precipitous manner, particularly when the grant of such relief will severely prejudice Maxus and Tierra’s abilities to prosecute their independent third party claims and to defend themselves with respect to the State’s claims, which are now being litigated under the Court’s Track VIII Trial Plan Order.

The State has waited nearly four years to engage in any serious settlement discussions with the third party defendants. The State has professed repeatedly not even to know whether it has any direct claims against these parties and the Court has allowed it to reserve all such claims until a later date. Yet, only now on the eve of the September 24th filing deadline for additional third and fourth party claims, has the State decided to begin any settlement discussions with the third party defendants concerning their environmental liabilities. The emergent need for relief is thus entirely self-created. It is unfair for the State to demand that the Court consider on a highly expedited basis whether to grant an “Order Staying Third Party Proceedings,” or evaluate the dramatic effects such a stay would have on this litigation. It is particularly unfair to expect that Maxus and Tierra can fully respond to the application *within seven hours* (or that counsel can even effectively communicate with their clients about its ramifications within that time frame).

There is no apparent basis for the Proposed Order that would stay “all third party proceedings” against the “Participating Third Party Defendants,” including “any and all proceedings and requirements under all Case Management Orders and supplemental orders.” As Your Honor is well aware, the third party defendants have repeatedly and

Honorable Sebastian P. Lombardi, J.S.C.  
September 20, 2012  
Page 2

unsuccessfully sought dismissal, or failing that severance, or failing that a stay, contending in each instance that this lawsuit did not really involve them. Similarly, the State used the same argument when it asked Judge Goldman to bar Maxus and Tierra from even filing the third party claims in the first instance, and when that failed it joined the third party defendants' unsuccessful motion. Apparently, some of the third party defendants and the State now are finally conceding the obvious—that the lawsuit concerning the environmental degradation of the Newark Bay Complex does very much involve them, and not only that, but the State somehow claims the right to extinguish the very same claims that the State has long conceded Maxus and Tierra have every right to pursue, just at another time or in another court. In the end, it should be seen as no more than the latest in a long sequence of requests to relieve most of the third party defendants relief from their discovery obligations based on no more than a promise that they will engage in settlement discussions over the next 90 days. There are several reasons why the Court should not take the bait.

First, the Memorandum of Understanding (“MOU”) has not been signed by all third party defendants. We do not know whether some third party defendants have refused to execute it. As of now, we do know that several large waste water systems, 40% of the municipal parties, and a number of private third party defendants have not entered into the MOU. The proposed order would extend the stay to any parties that executed the MOU before 4:00 p.m. on Monday, September 24. Thus, the Court will not know all of the parties that would be subject to the requested stay or how the stay would affect other parties that do not enter the MOU. Certainly, any stay that would cover a large number of third party defendants would require the Court to reconsider the provisions and deadlines of the Track VII Order, and potentially even the structure of that Order.

Second, there is no good reason to insulate the “Participating Third-Parties” from discovery, especially when Maxus and Tierra will be greatly prejudiced by the absence of that discovery. For one thing, third party discovery is needed to defend the damage claims the State is now prosecuting in Track VIII. Thus, Maxus and Tierra cannot be deprived of discovery from third party defendants whose discharges may have “caused” the State’s cleanup costs. For another, discovery from the third party defendants is important in defending against the State’s economic damage claims; since there is no joint and several liability for such damages, Maxus and Tierra must be able to gather the facts to establish that these damages are attributable to third parties. Thus, the requested stay of third party discovery, if granted, should also result in a stay, if not a re-thinking, of the provisions of the Track VIII Order. Beyond this, Maxus and Tierra will need discovery from the third party defendants in order to determine whether to object to any settlements, and the Court will need that information in order to evaluate the reasonableness of any settlements that are presented for its approval. Discovery from the third party defendants is also necessary in order to determine the appropriate “credit” against any liability Maxus and Tierra may ultimately have to the State.

Honorable Sebastian P. Lombardi, J.S.C.

September 20, 2012

Page 3

Third, the State has disclosed nothing about the elements of the “confidential term sheet.” That failure prevents the Court from addressing many key questions raised by Plaintiffs’ application. Initially, without reviewing the settlement terms, the Court cannot make even a preliminary assessment about whether the settlements might be approved. Nor can the Court possibly evaluate whether those terms are likely to be agreed upon within 90 days. The Court has been repeatedly told by the municipal third party defendants that they cannot make even the most ministerial of decisions in less than two months. There is no assurance that the more significant decisions concerning settlement would be made within 90 days or, as paragraph 5 of the MOU puts it, “for the earlier of 90 days or such time as the Settlement Agreement is finalized.” It is the State’s burden on this application to show that settlement is a realistic probability, not just to say that it wishes to engage in a “settlement process” under a “framework for settlement” that must still allow it to “complete negotiations” and “reach final terms.”

Nor is there any basis for the Court to assess whether a stay should issue since it has no assurance that the settlements would resolve *all* of the third party claims in the case. Indeed, there is good reason to think otherwise. The “Whereas clause” in the proposed order represents that the settlement negotiations will only “resolve certain third party claims.” Paragraph 1 of the MOU itself states that the settlements are intended to settle all claims asserted against the third party defendants “to the maximum extent possible.” Maxus and Tierra do not believe the any settlements with the State would extinguish the third party defendants’ liability for Maxus and Tierra’s direct contribution claims for their proportionate share of the more than \$100 million in clean up and removal costs Maxus and Tierra have incurred. The State concedes that this legal issue must be resolved by the Court when it approves the settlements four months from now.

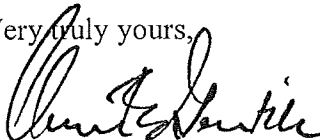
Finally, it borders on sharp practice for the State suddenly to bring to light these third party settlement discussions at the very same time the State and the Original Parties are engaged in a mediation intended to resolve the State’s claims. The ongoing mediation efforts suggest that Maxus and Tierra should be kept fully informed concerning the status of these discussions and the substance of the “Confidential Term Sheet.”

DrinkerBiddle&Reath  
LLP

Honorable Sebastian P. Lombardi, J.S.C.  
September 20, 2012  
Page 4

For all of these reasons, Maxus and Tierra submit that that the Court should not enter the Order Staying Proceedings as requested by Plaintiffs.

Very truly yours,



Vincent E. Gentile

VEG/aem

cc: Honorable Marina Corodemus, Special Master  
Thomas E. Starnes, Esq.  
Charles Crout, Esq.  
Blake T. Hannafan, Esq.  
All Counsel via posting on CT Summation